

Senate Engrossed House Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 119

## **HOUSE BILL 2344**

AN ACT

AMENDING SECTIONS 12-562, 13-1802, 14-5506, 46-451, 46-452, 46-453, 46-454, 46-455, 46-456 AND 46-457, ARIZONA REVISED STATUTES; RELATING TO INCAPACITATED AND VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-562, Arizona Revised Statutes, is amended to  
3 read:

4 12-562. Medical malpractice actions; grounds

5 A. A medical malpractice action shall not be brought against a  
6 licensed health care provider except upon the grounds set forth in section  
7 12-561.

8 B. A medical malpractice action brought against a licensed health care  
9 provider shall not be based upon assault and battery.

10 C. A medical malpractice action based upon breach of contract for  
11 professional services shall not be brought unless such contract is in  
12 writing.

13 D. A medical malpractice action brought against a physician licensed  
14 pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to  
15 title 32, chapter 7, a registered nurse practitioner licensed pursuant to  
16 title 32, chapter 15 or a physician assistant licensed pursuant to title 32,  
17 chapter 25 regarding services provided within that person's scope of practice  
18 shall not be based on the neglect, abuse or exploitation of an ~~incapacitated~~  
19 ~~or~~ A vulnerable adult, except as provided in section 46-455.

20 Sec. 2. Section 13-1802, Arizona Revised Statutes, is amended to read:

21 13-1802. Theft; classification; definitions

22 A. A person commits theft if, without lawful authority, the person  
23 knowingly:

24 1. Controls property of another with the intent to deprive the other  
25 person of such property; or

26 2. Converts for an unauthorized term or use services or property of  
27 another entrusted to the defendant or placed in the defendant's possession  
28 for a limited, authorized term or use; or

29 3. Obtains services or property of another by means of any material  
30 misrepresentation with intent to deprive the other person of such property or  
31 services; or

32 4. Comes into control of lost, mislaid or misdelivered property of  
33 another under circumstances providing means of inquiry as to the true owner  
34 and appropriates such property to the person's own or another's use without  
35 reasonable efforts to notify the true owner; or

36 5. Controls property of another knowing or having reason to know that  
37 the property was stolen; or

38 6. Obtains services known to the defendant to be available only for  
39 compensation without paying or an agreement to pay the compensation or  
40 diverts another's services to the person's own or another's benefit without  
41 authority to do so.

42 B. A person commits theft if, WITHOUT LAWFUL AUTHORITY, the person  
43 knowingly takes control, title, use or management of an ~~incapacitated or~~ A  
44 vulnerable adult's ~~assets or property through intimidation or deception, as~~  
45 ~~defined in section 46-456~~, while acting in a position of trust and confidence

1 and with the intent to deprive the ~~incapacitated or~~ vulnerable adult of the  
2 ~~asset or~~ property. PROOF THAT A PERSON TOOK CONTROL, TITLE, USE OR  
3 MANAGEMENT OF A VULNERABLE ADULT'S PROPERTY WITHOUT ADEQUATE CONSIDERATION TO  
4 THE VULNERABLE ADULT MAY GIVE RISE TO AN INFERENCE THAT THE PERSON INTENDED  
5 TO DEPRIVE THE VULNERABLE ADULT OF THE PROPERTY.

6 C. IT IS AN AFFIRMATIVE DEFENSE TO ANY PROSECUTION UNDER SUBSECTION B  
7 OF THIS SECTION THAT EITHER:

8 1. THE PROPERTY WAS GIVEN AS A GIFT CONSISTENT WITH A PATTERN OF GIFT  
9 GIVING TO THE PERSON THAT EXISTED BEFORE THE ADULT BECAME VULNERABLE.

10 2. THE PROPERTY WAS GIVEN AS A GIFT CONSISTENT WITH A PATTERN OF GIFT  
11 GIVING TO A CLASS OF INDIVIDUALS THAT EXISTED BEFORE THE ADULT BECAME  
12 VULNERABLE.

13 3. THE SUPERIOR COURT APPROVED THE TRANSACTION BEFORE THE TRANSACTION  
14 OCCURRED.

15 ~~C.~~ D. The inferences set forth in section 13-2305 apply to any  
16 prosecution under subsection A, paragraph 5 of this section.

17 ~~D.~~ E. At the conclusion of any grand jury proceeding, hearing or  
18 trial, the court shall preserve any trade secret that is admitted in evidence  
19 or any portion of a transcript that contains information relating to the  
20 trade secret pursuant to section 44-405.

21 F. SUBSECTION B OF THIS SECTION DOES NOT APPLY TO AN AGENT WHO IS  
22 ACTING WITHIN THE SCOPE OF THE AGENT'S DUTIES AS OR ON BEHALF OF A HEALTH  
23 CARE INSTITUTION THAT IS LICENSED PURSUANT TO TITLE 36, CHAPTER 4 AND THAT  
24 PROVIDES SERVICES TO THE VULNERABLE ADULT.

25 ~~E.~~ G. Theft of property or services with a value of twenty-five  
26 thousand dollars or more is a class 2 felony. Theft of property or services  
27 with a value of four thousand dollars or more but less than twenty-five  
28 thousand dollars is a class 3 felony. Theft of property or services with a  
29 value of three thousand dollars or more but less than four thousand dollars  
30 is a class 4 felony, except that theft of any vehicle engine or transmission  
31 is a class 4 felony regardless of value. Theft of property or services with  
32 a value of two thousand dollars or more but less than three thousand dollars  
33 is a class 5 felony. Theft of property or services with a value of one  
34 thousand dollars or more but less than two thousand dollars is a class 6  
35 felony. Theft of any property or services valued at less than one thousand  
36 dollars is a class 1 misdemeanor, unless the property is taken from the  
37 person of another, is a firearm or is a dog taken for the purpose of dog  
38 fighting in violation of section 13-2910.01, in which case the theft is a  
39 class 6 felony.

40 ~~F.~~ H. A person who is convicted of a violation of subsection A,  
41 paragraph 1 or 3 of this section that involved property with a value of one  
42 hundred thousand dollars or more is not eligible for suspension of sentence,  
43 probation, pardon or release from confinement on any basis except pursuant to  
44 section 31-233, subsection A or B until the sentence imposed by the court has

1 been served, the person is eligible for release pursuant to section  
2 41-1604.07 or the sentence is commuted.

3 I. FOR THE PURPOSES OF THIS SECTION:

4 1. "ADEQUATE CONSIDERATION" MEANS THE PROPERTY WAS GIVEN TO THE PERSON  
5 AS PAYMENT FOR BONA FIDE GOODS OR SERVICES PROVIDED BY THE PERSON AND THE  
6 PAYMENT WAS AT A RATE THAT WAS CUSTOMARY FOR SIMILAR GOODS OR SERVICES IN THE  
7 COMMUNITY THAT THE VULNERABLE ADULT RESIDED IN AT THE TIME OF THE  
8 TRANSACTION.

9 2. "PATTERN OF GIFT GIVING" MEANS TWO OR MORE GIFTS THAT ARE THE SAME  
10 OR SIMILAR IN TYPE AND MONETARY VALUE.

11 3. "POSITION OF TRUST AND CONFIDENCE" HAS THE SAME MEANING PRESCRIBED  
12 IN SECTION 46-456.

13 4. "PROPERTY" INCLUDES ALL FORMS OF REAL PROPERTY AND PERSONAL  
14 PROPERTY.

15 5. "VULNERABLE ADULT" HAS THE SAME MEANING AS PRESCRIBED IN SECTION  
16 46-451.

17 Sec. 3. Section 14-5506, Arizona Revised Statutes, is amended to read:

18 14-5506. Powers of attorney; intimidation; deception;  
19 definitions

20 ~~A. Except as provided in subsection B of this section, an agent shall~~  
21 ~~use the principal's money, property or other assets only in the principal's~~  
22 ~~best interest and the agent shall not use the principal's money, property or~~  
23 ~~other assets for the agent's benefit. An agent who violates this subsection~~  
24 ~~is subject to prosecution under title 13 and civil penalties pursuant to~~  
25 ~~section 46-456.~~

26 ~~B. Any authority, the use of which is not in the principal's best~~  
27 ~~interest or is for the agent's benefit including contracted for commissions,~~  
28 ~~fees or other compensation shall be specifically identified in detail within~~  
29 ~~the instrument or a written contract signed by the principal that is~~  
30 ~~specifically identified by the instrument and be separately initialed by the~~  
31 ~~principal and the witness at the time of execution.~~

32 ~~C. A. If the agent acted with intimidation or deception as defined in~~  
33 ~~section 46-456 in procuring the power of attorney or any authority provided~~  
34 ~~in the power of attorney, the agent is subject to prosecution under title 13~~  
35 ~~and civil penalties pursuant to section 46-456.~~

36 ~~D. B. A power of attorney executed by an adult who does not have~~  
37 ~~capacity is invalid. In a criminal proceeding, the agent has the burden of~~  
38 ~~proving by clear and convincing evidence that the principal had capacity. In~~  
39 ~~a civil proceeding, if the party challenging the validity of a power of~~  
40 ~~attorney on the grounds of lack of capacity proves by a preponderance of the~~  
41 ~~evidence that, at the time the power of attorney was executed, the principal~~  
42 ~~was a vulnerable adult, the agent has the burden of proving by clear and~~  
43 ~~convincing evidence that the principal had capacity. In a civil proceeding,~~  
44 ~~if the party challenging the validity of a power of attorney on the basis of~~  
45 ~~lack of capacity does not prove by a preponderance of the evidence that, at~~

1 the time the power of attorney was executed, the principal was a vulnerable  
2 adult, the agent has the burden of proving by a preponderance of the evidence  
3 that the principal had capacity.

4 ~~E.~~ C. A person who in good faith either assists or deals with an  
5 agent is protected as if the agent properly exercised the agent's power  
6 regardless of whether the authority of that person as the agent has been  
7 terminated.

8 ~~F.~~ D. For THE purposes of this section:

9 ~~1. "Best interest" means the agent acts solely for the principal's~~  
10 ~~benefit.~~

11 ~~2.~~ 1. "Capacity" means that at the time the power of attorney was  
12 executed the principal was capable of understanding in a reasonable manner  
13 the nature and effect of the act of executing and granting the power of  
14 attorney.

15 2. "INTIMIDATION" INCLUDES THREATENING TO DEPRIVE A VULNERABLE ADULT  
16 OF FOOD, NUTRITION, SHELTER OR NECESSARY MEDICATION OR MEDICAL TREATMENT.

17 3. "Vulnerable adult" has the same meaning prescribed in section  
18 46-451.

19 Sec. 4. Section 46-451, Arizona Revised Statutes, is amended to read:  
20 46-451. Definitions; program goals

21 A. In this chapter, unless the context otherwise requires:

22 1. "Abuse" means:

23 (a) Intentional infliction of physical harm.

24 (b) Injury caused by negligent acts or omissions.

25 (c) Unreasonable confinement.

26 (d) Sexual abuse or sexual assault.

27 2. "De facto conservator" means any person who takes possession of the  
28 estate of an ~~incapacitated or~~ A vulnerable adult, without right or lawful  
29 authority. A de facto conservator is subject to all of the responsibilities  
30 that attach to a legally appointed conservator or trustee.

31 3. "De facto guardian" means any person who takes possession of the  
32 person of an ~~incapacitated or~~ A vulnerable adult, without right or lawful  
33 authority. A de facto guardian is subject to all of the responsibilities  
34 that attach to a legally appointed guardian.

35 4. "Exploitation" means the illegal or improper use of an  
36 ~~incapacitated or~~ A vulnerable adult or his resources for another's profit or  
37 advantage.

38 ~~5. "Incapacity" means an impairment by reason of mental illness,~~  
39 ~~mental deficiency, mental disorder, physical illness or disability, advanced~~  
40 ~~age, chronic use of drugs, chronic intoxication or other cause to the extent~~  
41 ~~that the person lacks sufficient understanding or capacity to make or~~  
42 ~~communicate informed decisions concerning his person.~~

43 ~~6.~~ 5. "Informed consent" means any of the following:

44 (a) A written expression by the person that the person fully  
45 understands the potential risks and benefits of the withdrawal of food,

1 water, medication, medical services, shelter, cooling, heating or other  
2 services necessary to maintain minimum physical or mental health and that the  
3 person desires that the services be withdrawn.

4 (b) Consent to withdraw food, water, medication, medical services,  
5 shelter, cooling, heating or other services necessary to maintain minimum  
6 physical or mental health as permitted by an order of a court of competent  
7 jurisdiction.

8 (c) A declaration made pursuant to title 36, chapter 32.

9 (d) Consent by another person under a durable power of attorney  
10 relating to health care services to withdraw food, water, medication, medical  
11 services, shelter, cooling, heating or other services necessary to maintain  
12 minimum physical or mental health.

13 ~~7-~~ 6. "Neglect" means a pattern of conduct without the person's  
14 informed consent resulting in deprivation of food, water, medication, medical  
15 services, shelter, cooling, heating or other services necessary to maintain  
16 minimum physical or mental health.

17 ~~8-~~ 7. "Protective services" means a program of identifiable and  
18 specialized social services that may offer social services appropriate to  
19 resolve problems of abuse, exploitation or neglect of an ~~incapacitated or~~ A  
20 vulnerable adult.

21 ~~9-~~ 8. "Protective services worker" means a person who has been  
22 selected by and trained under the requirements prescribed by the department  
23 to provide protective services.

24 ~~10-~~ 9. "Vulnerable adult" means an individual who is eighteen years of  
25 age or older AND who is unable to protect himself from abuse, neglect or  
26 exploitation by others because of a physical or mental impairment.  
27 VULNERABLE ADULT INCLUDES AN INCAPACITATED PERSON AS DEFINED IN SECTION  
28 14-5101.

29 B. Protective services programs shall seek to maintain the adult in  
30 his familiar environment by strengthening his capacity for self-maintenance  
31 or by providing supportive services.

32 C. Nothing in this section shall be construed to mean that an adult is  
33 abused, neglected or in need of protective services for the sole reason that  
34 he relies on treatment from a recognized religious method of healing in lieu  
35 of medical treatment.

36 D. A written expression pursuant to subsection A, paragraph 6- 5,  
37 subdivision (a) of this section is valid only if the person is of sound mind  
38 when the consent is made and if the consent is witnessed by at least two  
39 individuals who do not benefit by the withdrawal of services.

40 Sec. 5. Section 46-452, Arizona Revised Statutes, is amended to read:  
41 46-452. Protective services worker; powers and duties

42 A. A protective services worker shall:

43 1. Receive reports of abused, exploited or neglected ~~incapacitated or~~  
44 vulnerable adults.

2. Receive from any source oral or written information regarding an adult who may be in need of protective services.

3. Upon receipt of such information make an evaluation to determine if the adult is in need of protective services and what services, if any, are needed.

4. Offer an adult in need of protective services or his guardian whatever services appear appropriate in view of the evaluation.

5. File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator or make application for a special visitation warrant as provided for in title 14, chapter 5.

B. The department or a protective services worker employed by the department may not be appointed as guardian, conservator or temporary guardian.

C. An adult protective services worker is immune from civil liability for applying for a special visitation warrant or for filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

Sec. 6. Section 46-453, Arizona Revised Statutes, is amended to read:

46-453. Immunity of participants; nonprivileged communication

A. Any person making a complaint, furnishing a report, information or records required or authorized by this chapter or otherwise participating in the program authorized by this chapter or in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of abusing, exploiting or neglecting the ~~incapacitated or~~ vulnerable adult in question. Except as provided in subsection B of this section the physician-patient privilege, husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which ~~an incapacitated or~~ A vulnerable adult's exploitation, abuse or neglect is an issue nor in any judicial or administrative proceeding resulting from a report, information or records submitted or obtained pursuant to section 46-454 nor in any investigation of ~~an incapacitated or~~ A vulnerable adult's exploitation, abuse or neglect conducted by a peace officer or a protective services worker.

B. In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of ~~an incapacitated or~~ A vulnerable adult is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a

1 priest in the course of the discipline enjoined by the church to which he  
2 belongs.

3 Sec. 7. Section 46-454, Arizona Revised Statutes, is amended to read:

4 46-454. Duty to report abuse, neglect and exploitation of  
5 vulnerable adults; duty to make medical records  
6 available; violation; classification

7 A. A physician, registered nurse practitioner, hospital intern or  
8 resident, surgeon, dentist, psychologist, social worker, peace officer or  
9 other person who has responsibility for the care of ~~an incapacitated or~~ A  
10 vulnerable adult and who has a reasonable basis to believe that abuse or  
11 neglect of the adult has occurred or that exploitation of the adult's  
12 property has occurred shall immediately report or cause reports to be made of  
13 such reasonable basis to a peace officer or to a protective services worker.  
14 The guardian or conservator of ~~an incapacitated or~~ A vulnerable adult shall  
15 immediately report or cause reports to be made of such reasonable basis to  
16 the superior court. All of the above reports shall be made immediately in  
17 person or by telephone and shall be followed by a written report mailed or  
18 delivered within forty-eight hours or on the next working day if the  
19 forty-eight hours expire on a weekend or holiday.

20 B. An attorney, accountant, trustee, guardian, conservator or other  
21 person who has responsibility for preparing the tax records of ~~an~~  
22 ~~incapacitated or~~ A vulnerable adult or a person who has responsibility for  
23 any other action concerning the use or preservation of the ~~incapacitated or~~  
24 vulnerable adult's property and who, in the course of fulfilling that  
25 responsibility, discovers a reasonable basis to believe that exploitation of  
26 the adult's property has occurred or that abuse or neglect of the adult has  
27 occurred shall immediately report or cause reports to be made of such  
28 reasonable basis to a peace officer, to a protective services worker or to  
29 the public fiduciary of the county in which the ~~incapacitated or~~ vulnerable  
30 adult resides. If the public fiduciary is unable to investigate the contents  
31 of a report, the public fiduciary shall immediately forward the report to a  
32 protective services worker. If a public fiduciary investigates a report and  
33 determines that the matter is outside the scope of action of a public  
34 fiduciary, then the report shall be immediately forwarded to a protective  
35 services worker. All of the above reports shall be made immediately in  
36 person or by telephone and shall be followed by a written report mailed or  
37 delivered within forty-eight hours or on the next working day if the  
38 forty-eight hours expire on a weekend or holiday.

39 C. Reports pursuant to subsections A and B shall contain:

40 1. The names and addresses of the adult and any persons having control  
41 or custody of the adult, if known.

42 2. The adult's age and the nature and extent of ~~incapacity or~~ THE  
43 ADULT'S vulnerability.

44 3. The nature and extent of the adult's injuries or physical neglect  
45 or of the exploitation of the adult's property.



1           4. Any other information that the person reporting believes might be  
2 helpful in establishing the cause of the adult's injuries or physical neglect  
3 or of the exploitation of the adult's property.

4           D. Any person other than one required to report or cause reports to be  
5 made in subsection A who has a reasonable basis to believe that abuse or  
6 neglect of ~~an incapacitated or~~ A vulnerable adult has occurred may report the  
7 information to a peace officer or to a protective services worker.

8           E. A person having custody or control of medical or financial records  
9 of ~~an incapacitated or~~ A vulnerable adult for whom a report is required or  
10 authorized under this section shall make such records, or a copy of such  
11 records, available to a peace officer or adult protective services worker  
12 investigating the ~~incapacitated or~~ vulnerable adult's neglect, exploitation  
13 or abuse on written request for the records signed by the peace officer or  
14 adult protective services worker. Records disclosed pursuant to this  
15 subsection are confidential and may be used only in a judicial or  
16 administrative proceeding or investigation resulting from a report required  
17 or authorized under this section.

18           F. If reports pursuant to this section are received by a peace  
19 officer, the peace officer shall notify the adult protective services of the  
20 department of economic security as soon as possible and make such information  
21 available to them.

22           G. A person required to receive reports pursuant to subsection A, B or  
23 D may take or cause to be taken photographs of the abused adult and the  
24 vicinity involved. Medical examinations including radiological examinations  
25 of the involved adult may be performed. Accounts, inventories or audits of  
26 the exploited adult's property may be performed. The person, department,  
27 agency, or court that initiates such photographs, examinations, accounts,  
28 inventories or audits shall pay the associated costs in accordance with  
29 existing statutes and rules. If any person is found to be responsible for  
30 the abuse, neglect or exploitation of ~~an incapacitated or~~ A vulnerable adult  
31 in a criminal or civil action, the court may order the person to make  
32 restitution as the court deems appropriate.

33           H. If psychiatric records are requested pursuant to subsection E, the  
34 custodian of the records shall notify the attending psychiatrist, who may  
35 excise from the records, before they are made available:

36           1. Personal information about individuals other than the patient.

37           2. Information regarding specific diagnosis or treatment of a  
38 psychiatric condition, if the attending psychiatrist certifies in writing  
39 that release of the information would be detrimental to the patient's health  
40 or treatment.

41           I. If any portion of a psychiatric record is excised pursuant to  
42 subsection H, a court, upon application of a peace officer or adult  
43 protective services worker, may order that the entire record or any portion  
44 of such record containing information relevant to the reported abuse or

neglect be made available to the peace officer or adult protective services worker investigating the abuse or neglect.

J. A licensing agency shall not find that a reported incidence of abuse at a care facility by itself is sufficient grounds to permit the agency to close the facility or to find that all residents are in imminent danger.

K. A person who violates any provision of this section is guilty of a class 1 misdemeanor.

Sec. 8. Section 46-455, Arizona Revised Statutes, is amended to read:

46-455. Permitting life or health of a vulnerable adult to be endangered by neglect; violation; classification; civil remedy; definition

A. A person who has been employed to provide care, who is a de facto guardian or de facto conservator or who has been appointed by a court to provide care to an ~~incapacitated~~ or A vulnerable adult and who causes or permits the life of the adult to be endangered or that person's health to be injured or endangered by neglect is guilty of a class 5 felony.

B. An ~~incapacitated~~ or A vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such ~~incapacitated~~ or vulnerable adult for having caused or permitted such conduct. A physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25, while providing services within the scope of that person's licensure, is not subject to civil liability for damages under this section unless either:

1. At the time of the events giving rise to a cause of action under this section, the person was employed or retained by the facility or designated by the facility, with the consent of the person, to serve the function of medical director as that term is defined or used by federal or state law governing a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.

2. At the time of the events giving rise to a cause of action under this section, all of the following applied:

(a) The person was a physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25.

(b) The person was the primary provider responsible for the medical services to the patient while the patient was at one of the facilities listed in paragraph 1 of this subsection.

1 C. Any person who was the primary provider of medical services to the  
2 patient in the last two years before it was recommended that the patient be  
3 admitted to one of the facilities listed in subsection B, paragraph 1 of this  
4 section is exempt from civil liability for damages under this section.

5 D. For the purposes of this section, primary provider does not include  
6 a consultant or specialist as listed in subsection B, paragraph 2,  
7 subdivision (a) of this section who is requested by the primary provider to  
8 provide care to the patient for whom the primary provider is responsible,  
9 unless that consultant or specialist assumes the primary care of the patient.

10 E. The state may file an action pursuant to this section on behalf of  
11 those persons endangered or injured to prevent, restrain or remedy the  
12 conduct described in this section.

13 F. The superior court has jurisdiction to prevent, restrain and remedy  
14 the conduct described in this section, after making provision for the rights  
15 of all innocent persons affected by such conduct and after a hearing or  
16 trial, as appropriate, by issuing appropriate orders.

17 G. Before a determination of liability, the orders may include, but  
18 are not limited to, entering restraining orders or temporary injunctions or  
19 taking such other actions, including the acceptance of satisfactory  
20 performance bonds, the creation of receiverships and the appointment of  
21 qualified receivers and the enforcement of constructive trusts, as the court  
22 deems proper.

23 H. After a determination of liability such orders may include, but are  
24 not limited to:

25 1. Ordering any person to divest himself of any direct or indirect  
26 interest in any enterprise.

27 2. Imposing reasonable restrictions, including permanent injunctions,  
28 on the future activities or investments of any person including prohibiting  
29 any person from engaging in the same type of endeavor or conduct to the  
30 extent permitted by the constitutions of the United States and this state.

31 3. Ordering dissolution or reorganization of any enterprise.

32 4. Ordering the payment of actual and consequential damages, as well  
33 as costs of suit and reasonable attorney fees, to those persons injured by  
34 the conduct described in this section. The court or jury may order the  
35 payment of punitive damages under common law principles that are generally  
36 applicable to the award of punitive damages in other civil actions. The  
37 court may order the payment of reasonable attorney fees that do not exceed  
38 two times the total amount of compensatory damages that are awarded in the  
39 action, except that the court may award additional attorney fees in  
40 connection with the action after the court has reviewed and approved a  
41 request for additional attorney fees to the plaintiff.

42 5. Ordering the payment of all costs and expenses of the prosecution  
43 and investigation of the conduct described in this section, civil and  
44 criminal, incurred by the state or county as appropriate to be paid to the

1 general fund of this state or the county that incurred such costs and  
2 expenses.

3 I. A defendant convicted in any criminal proceeding is precluded from  
4 subsequently denying the essential allegations of the criminal offense of  
5 which he was convicted in any civil proceeding. For the purposes of this  
6 subsection, a conviction may result from a verdict or plea, including a plea  
7 of no contest.

8 J. A person who files an action under this section shall serve notice  
9 and one copy of the pleading on the attorney general within thirty days after  
10 the action is filed with the superior court. The notice shall identify the  
11 action, the person and the person's attorney. Service of the notice does not  
12 limit or otherwise affect the right of this state to maintain an action under  
13 this section or intervene in a pending action nor does it authorize the  
14 person to name this state or the attorney general as a party to the action.  
15 Upon receipt of a complaint the attorney general shall notify the appropriate  
16 licensing agency.

17 K. The initiation of civil proceedings pursuant to this section shall  
18 be commenced within two years after actual discovery of the cause of action.

19 L. Except for the standard of proof provided in subsection H,  
20 paragraph 4 of this section, the standard of proof in civil actions brought  
21 pursuant to this section is the preponderance of the evidence.

22 M. Except in cases filed by a county attorney, the attorney general,  
23 upon timely application, may intervene in any civil action or proceeding  
24 brought under this section if the attorney general certifies that in his  
25 opinion the action is of special public importance. Upon intervention, the  
26 attorney general may assert any available claim and is entitled to the same  
27 relief as if the attorney general had instituted a separate action.

28 N. In addition to the state's right to intervene as a party in any  
29 action under this section, the attorney general may appear as a friend of the  
30 court in any proceeding in which a claim under this section has been asserted  
31 or in which a court is interpreting section 46-453 or this section.

32 O. A civil action authorized by this section is remedial and not  
33 punitive and does not limit and is not limited by any other civil remedy or  
34 criminal action or any other provision of law. Civil remedies provided under  
35 this title are supplemental and not mutually exclusive.

36 P. The cause of action or the right to bring a cause of action  
37 pursuant to subsection B or E of this section shall not be limited or  
38 affected by the death of the ~~incapacitated or vulnerable adult~~.

39 Q. For the purposes of this section, "enterprise" means any  
40 corporation, partnership, association, labor union, or other legal entity,  
41 or any group of persons associated in fact although not a legal entity, ~~which~~  
42 THAT is involved with providing care to an ~~incapacitated or~~ A vulnerable  
43 adult.

1       Sec. 9. Section 46-456, Arizona Revised Statutes, is amended to read:  
2       46-456. Duty to a vulnerable adult; financial exploitation;  
3       civil penalties; exceptions; definitions

4       A. A person who is in a position of trust and confidence to an  
5       ~~incapacitated or~~ A vulnerable adult shall ~~act for the benefit of that person~~  
6       ~~to the same extent as a trustee pursuant to title 14, chapter 7. USE THE~~  
7       VULNERABLE ADULT'S ASSETS SOLELY FOR THE BENEFIT OF THE VULNERABLE ADULT AND  
8       NOT FOR THE BENEFIT OF THE PERSON WHO IS IN THE POSITION OF TRUST AND  
9       CONFIDENCE TO THE VULNERABLE ADULT OR THE PERSON'S RELATIVES UNLESS EITHER OF  
10      THE FOLLOWING APPLIES:

11       1. THE SUPERIOR COURT GIVES PRIOR APPROVAL OF THE TRANSACTION.

12       2. THE TRANSACTION IS SPECIFICALLY AUTHORIZED IN A VALID DURABLE POWER  
13      OF ATTORNEY THAT IS EXECUTED BY THE VULNERABLE ADULT AS THE PRINCIPAL OR IN A  
14      VALID TRUST INSTRUMENT THAT IS EXECUTED BY THE VULNERABLE ADULT AS A  
15      SETTLOR.

16      ~~B. A person who is in a position of trust and confidence and who by~~  
17      ~~intimidation or deception knowingly takes control, title, use or management~~  
18      ~~of an incapacitated or vulnerable adult's asset or property with the intent~~  
19      ~~to permanently deprive that person of the asset or property is guilty of~~  
20      ~~theft as provided in section 13-1802.~~

21      ~~C. B.~~ B. A person who violates subsection A ~~or B~~ of this section ~~is~~ OR  
22      SECTION 13-1802, SUBSECTION B SHALL BE subject to ACTUAL damages in a civil  
23      action brought by or on behalf of an ~~incapacitated or~~ A vulnerable adult ~~that~~  
24      ~~equal up to three times the amount of the monetary damages~~ AND THE COURT MAY  
25      AWARD ADDITIONAL DAMAGES FOR AN AMOUNT UP TO TWO TIMES THE AMOUNT OF THE  
26      ACTUAL DAMAGES.

27      ~~D. C.~~ C. IN ADDITION TO THE DAMAGES PRESCRIBED IN SUBSECTION B OF THIS  
28      SECTION, THE COURT MAY:

29       1. ORDER A person who violates subsection A ~~or B~~ of this section  
30      ~~forfeits~~ OR SECTION 13-1802, SUBSECTION B TO FORFEIT all OR A PORTION OF THE  
31      PERSON'S benefits UNDER TITLE 14, CHAPTER 2 with respect to the estate of the  
32      ~~deceased, incapacitated or~~ vulnerable adult, including an intestate share, an  
33      elective share, an omitted spouse's share, an omitted child's share, a  
34      homestead allowance, ~~an~~ ANY exempt property allowance and a family allowance.  
35      If the ~~incapacitated or~~ vulnerable adult died intestate, the ~~decedent's~~  
36      VULNERABLE ADULT'S intestate estate passes as if the person who ~~committed the~~  
37      ~~violation~~ VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802,  
38      SUBSECTION B disclaimed that person's intestate share TO THE EXTENT THE COURT  
39      ORDERS THAT PERSON TO FORFEIT ALL OR A PORTION OF THE PERSON'S BENEFITS UNDER  
40      TITLE 14, CHAPTER 2.

41       2. REVOKE, IN WHOLE OR IN PART, ANY REVOCABLE:

42       (a) DISPOSITION OR APPOINTMENT OF PROPERTY THAT IS MADE IN A GOVERNING  
43      INSTRUMENT BY THE VULNERABLE ADULT TO THE PERSON WHO VIOLATES SUBSECTION A OF  
44      THIS SECTION OR SECTION 13-1802, SUBSECTION B.

1 (b) PROVISION BY THE VULNERABLE ADULT THAT IS CONTAINED IN A GOVERNING  
2 INSTRUMENT THAT CONFERS A GENERAL OR NONGENERAL POWER OF APPOINTMENT ON THE  
3 PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802,  
4 SUBSECTION B.

5 (c) NOMINATION OR APPOINTMENT BY THE VULNERABLE ADULT THAT IS  
6 CONTAINED IN A GOVERNING INSTRUMENT THAT NOMINATES OR APPOINTS THE PERSON WHO  
7 VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B TO  
8 SERVE IN ANY FIDUCIARY OR REPRESENTATIVE CAPACITY, INCLUDING SERVING AS A  
9 PERSONAL REPRESENTATIVE, EXECUTOR, GUARDIAN, CONSERVATOR, TRUSTEE OR AGENT.

10 3. SEVER THE INTERESTS OF THE VULNERABLE ADULT AND THE PERSON WHO  
11 VIOLATES SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B IN ANY  
12 PROPERTY THAT IS HELD BY THEM AT THE TIME OF THE VIOLATION AS JOINT TENANTS  
13 WITH THE RIGHT OF SURVIVORSHIP OR AS COMMUNITY PROPERTY WITH THE RIGHT OF  
14 SURVIVORSHIP, AND TRANSFORM THE INTERESTS OF THE VULNERABLE ADULT AND THE  
15 PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802,  
16 SUBSECTION B INTO TENANCIES IN COMMON. TO THE EXTENT THAT THE PERSON WHO  
17 VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B DID  
18 NOT PROVIDE ADEQUATE CONSIDERATION FOR THE JOINTLY HELD INTEREST, THE COURT  
19 MAY CAUSE THE PERSON'S INTEREST IN THE SUBJECT PROPERTY TO BE FORFEITED IN  
20 WHOLE OR IN PART.

21 D. A REVOCATION OR A SEVERANCE UNDER SUBSECTION C, PARAGRAPH 2 OR 3 OF  
22 THIS SECTION DOES NOT AFFECT ANY THIRD PARTY INTEREST IN PROPERTY THAT WAS  
23 ACQUIRED FOR VALUE AND IN GOOD FAITH RELIANCE ON APPARENT TITLE BY  
24 SURVIVORSHIP IN THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR  
25 SECTION 13-1802, SUBSECTION B UNLESS A WRITING DECLARING THE SEVERANCE HAS  
26 BEEN NOTED, REGISTERED, FILED OR RECORDED IN RECORDS THAT ARE APPROPRIATE TO  
27 THE KIND AND LOCATION OF THE PROPERTY AND THAT ARE RELIED ON AS EVIDENCE OF  
28 OWNERSHIP IN THE ORDINARY COURSE OF TRANSITIONS INVOLVING THAT PROPERTY.

29 E. IF THE COURT IMPOSES A REVOCATION UNDER SUBSECTION C, PARAGRAPH 2  
30 OF THIS SECTION, PROVISIONS OF THE GOVERNING INSTRUMENT SHALL BE GIVEN EFFECT  
31 AS IF THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION  
32 13-1802, SUBSECTION B DISCLAIMED ALL PROVISIONS REVOKED BY THE COURT OR, IN  
33 THE CASE OF A REVOCATION OF A NOMINATION IN A FIDUCIARY OR REPRESENTATIVE  
34 CAPACITY, THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION  
35 13-1802, SUBSECTION B PREDECEASED THE DECEDENT.

36 ~~E.~~ F. Section 46-455, subsections F, G, H, I, K, L, M and P also  
37 apply to civil violations of this section.

38 G. THE VULNERABLE ADULT OR THE DULY APPOINTED CONSERVATOR OR PERSONAL  
39 REPRESENTATIVE OF THE VULNERABLE ADULT'S ESTATE HAS PRIORITY TO, AND MAY  
40 FILE, A CIVIL ACTION UNDER THIS SECTION. IF AN ACTION IS NOT FILED BY THE  
41 VULNERABLE ADULT OR THE DULY APPOINTED CONSERVATOR OR PERSONAL REPRESENTATIVE  
42 OF THE VULNERABLE ADULT'S ESTATE, ANY OTHER INTERESTED PERSON, AS DEFINED IN  
43 SECTION 14-1201, MAY PETITION THE COURT FOR LEAVE TO FILE AN ACTION ON BEHALF  
44 OF THE VULNERABLE ADULT OR THE VULNERABLE ADULT'S ESTATE. NOTICE OF THE  
45 HEARING ON THE PETITION SHALL COMPLY WITH SECTION 14-1401.

1        ~~F.~~ H. Subsections A, B, C, D, and E AND F of this section do not  
2 apply to an agent ~~that is~~ WHO IS ACTING WITHIN THE SCOPE OF THE PERSON'S  
3 DUTIES AS, OR ON BEHALF OF, any of the following:

4        1. A bank, financial institution or escrow agent licensed or certified  
5 pursuant to title 6.

6        2. A securities dealer or salesman registered pursuant to title 44,  
7 chapter 12, article 9.

8        3. An insurer, including a title insurer, authorized and regulated  
9 pursuant to title 20.

10       4. A HEALTH CARE INSTITUTION LICENSED PURSUANT TO TITLE 36, CHAPTER 4  
11 THAT PROVIDES SERVICES TO THE VULNERABLE ADULT.

12       ~~G.~~ I. For the purposes of this section:

13       1. ~~"Deception" means that a person deceives an incapacitated or~~  
14 ~~vulnerable adult by knowingly doing any of the following:~~

15       ~~(a) Creating or confirming a false impression in an incapacitated or~~  
16 ~~vulnerable adult's mind.~~

17       ~~(b) Failing to correct a false impression that the person is~~  
18 ~~responsible for creating or confirming in an incapacitated or vulnerable~~  
19 ~~adult's mind.~~

20       ~~(c) Making a promise to an incapacitated or vulnerable adult that the~~  
21 ~~person does not intend to perform or that the person knows will not or cannot~~  
22 ~~be performed. A person's failure to perform a promise is not by itself~~  
23 ~~sufficient proof that the person did not intend to perform the promise.~~

24       ~~(d) Misrepresenting or concealing a material fact that relates to the~~  
25 ~~terms of a contract or an agreement that the person enters into with the~~  
26 ~~incapacitated or vulnerable adult or that relates to the existing or~~  
27 ~~preexisting condition of any of the property involved in a contract or an~~  
28 ~~agreement.~~

29       ~~(e) Using any material misrepresentation, false pretense or false~~  
30 ~~promise to induce, encourage or solicit an incapacitated or vulnerable adult~~  
31 ~~to enter into a contract or an agreement.~~

32       2. ~~"Intimidation" includes threatening to deprive an incapacitated or~~  
33 ~~vulnerable adult of food, nutrition, shelter or necessary medication or~~  
34 ~~medical treatment.~~

35       1. "ASSET" INCLUDES ALL FORMS OF PERSONAL AND REAL PROPERTY.

36       2. "DISPOSITION OR APPOINTMENT OF PROPERTY" INCLUDES A TRANSFER OF AN  
37 ITEM OF PROPERTY OR ANY OTHER BENEFIT OF A BENEFICIARY DESIGNATED IN A  
38 GOVERNING INSTRUMENT.

39       3. "GOVERNING INSTRUMENT" MEANS A DEED, A WILL, A TRUST, A  
40 CUSTODIANSHIP, AN INSURANCE OR ANNUITY POLICY, AN ACCOUNT WITH PAY ON DEATH  
41 DESIGNATION, A SECURITY REGISTERED IN BENEFICIARY FORM, A PENSION, A PROFIT  
42 SHARING, RETIREMENT OR SIMILAR BENEFIT PLAN, AN INSTRUMENT CREATING OR  
43 EXERCISING A POWER OF APPOINTMENT, A POWER OF ATTORNEY OR A DISPOSITIVE,  
44 APPOINTIVE OR NOMINATIVE INSTRUMENT OF ANY SIMILAR TYPE.

3- 4. "Position of trust and confidence" means that a person is any of the following:

(a) ~~One~~ A PERSON who has assumed a duty to provide care to the ~~incapacitated or~~ vulnerable adult.

(b) A joint tenant or a tenant in common with an ~~incapacitated or~~ A vulnerable adult.

(c) ~~One~~ A PERSON who is in a fiduciary relationship with an ~~incapacitated or~~ A vulnerable adult including a de facto guardian or de facto conservator.

(d) A PERSON WHO IS IN A CONFIDENTIAL RELATIONSHIP WITH THE VULNERABLE ADULT. THE ISSUE OF WHETHER A CONFIDENTIAL RELATIONSHIP EXISTS SHALL BE AN ISSUE OF FACT TO BE DECIDED BY THE COURT BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

5. "REVOCABLE" MEANS A DISPOSITION, APPOINTMENT, PROVISION OR NOMINATION UNDER WHICH THE VULNERABLE ADULT, AT THE TIME OF OR IMMEDIATELY BEFORE DEATH, WAS ALONE EMPOWERED, BY LAW OR UNDER THE GOVERNING INSTRUMENT, TO CANCEL THE DESIGNATION IN FAVOR OF THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B, WHETHER OR NOT THE VULNERABLE ADULT WAS THEN EMPOWERED TO DESIGNATE THE VULNERABLE ADULT IN PLACE OF THE PERSON WHO VIOLATED SUBSECTION A OF THIS SECTION OR SECTION 13-1802, SUBSECTION B OR THE VULNERABLE ADULT THEN HAD CAPACITY TO EXERCISE THE POWER.

Sec. 10. Section 46-457, Arizona Revised Statutes, is amended to read:

46-457. Elder abuse central registry; mandatory reporting; release of information

A. A person who files an action under this article shall serve notice and one copy of the pleading with the attorney general within thirty days after the action is filed in the superior court. The notice shall identify the action, the person against whom the civil complaint has been filed and that person's attorney. The person who files an action is responsible for submitting a report on the final disposition of the case within thirty days after the final action is taken.

B. Except as otherwise provided in this subsection, a state agency other than adult protective services that renders an administrative decision that substantiates the allegation of abuse or that files a civil action that alleges abuse, neglect or financial exploitation pursuant to this article or title 36 shall serve notice and one copy of the administrative decision or pleading with the attorney general within thirty days after the administrative decision is rendered or within thirty days after the action is filed in the superior court. The agency is responsible for submitting a report on the final disposition of the case within thirty days after the final action is taken. Adult protective services shall report its findings to the registry established pursuant to section 46-459. The department of economic security shall not provide the notice prescribed in this subsection for information maintained in the adult protective services registry pursuant to section 46-459.



1 C. If the victim of the offense is an ~~incapacitated or~~ A vulnerable  
2 adult, a person who files a criminal complaint or indictment involving a  
3 violation of this article or section 13-1102, 13-1103, 13-1104, 13-1105,  
4 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406,  
5 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall submit a copy of the  
6 criminal complaint or indictment to the attorney general within thirty days  
7 after arraignment. Within thirty days of the date of issuance of the minute  
8 entry the court shall endorse to the attorney general a copy of the  
9 sentencing minute entry or the minute entry reflecting the case has been  
10 dismissed or a judgment of acquittal has been entered. The attorney general  
11 shall develop guidelines to implement this subsection.

12 D. The attorney general shall maintain a registry containing the names  
13 of persons pursuant to subsection A, B or C of this section with the date the  
14 action was filed with the superior court or the date the administrative  
15 decision was rendered, the dates of the conduct set forth in the complaint,  
16 the indictment or decision, the general nature of the complaint, indictment  
17 or decision and the disposition of the complaint, indictment or decision, if  
18 known.

19 E. The information maintained pursuant to subsection D of this section  
20 is available to the public on written request to the custodian of the  
21 registry.

22 F. A person may submit a written statement on that person's own behalf  
23 to the custodian of the registry. The statement is part of the records for  
24 distribution in response to all inquiries concerning that person.

25 G. A person or agency that distributes information in the registry in  
26 good faith is not subject to civil or criminal liability.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.